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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Kirby Spencer,)	CASE NO.
)	
Plaintiff,)	
)	
vs.)	COMPLAINT FOR DAMAGES FOR
)	VIOLATION OF THE TELEPHONE
)	CONSUMER PROTECTION ACT, 47
MRS BPO, LLC, a foreign limited-liability)	U.S.C. § 227 ET. SEQ.
company doing business in Nevada,)	
)	JURY TRIAL DEMANDED
Defendant.)	
)	

COMPLAINT

COMES NOW Spencer Kirby (hereafter referred to as "Plaintiff"), by and through his attorney, Craig K. Perry, Esq. of the law firm of Craig K. Perry & Associates, and alleges the following against MRS BPO, LLC (hereafter referred to as Defendant "MRS").

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (hereafter referred to as "TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 47 U.S.C. § 227(g)(2), and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

1 3. MRS conducts business in the State of Nevada and therefore, personal jurisdiction is
2 established.

3 4. Venue in this District is proper pursuant to 47 U.S.C. § 227(e)(6)(E)(i), which
4 incorporates by reference 28 U.S.C. § 1391, of which the following subsections apply: (b)(2), because
5 a substantial part of the events giving rise to the claim arose in Nevada, and (c)(1), because Plaintiff is a
6 resident of the state of Nevada.
7

8 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
9

10 **PARTIES**

11 6. Plaintiff is a natural person residing in Henderson, Nevada.

12 7. Plaintiff is both a “person” and “called party” as those terms are used or defined in 47
13 U.S.C. § 227.

14 8. MRS is a New Jersey limited-liability company doing business in Nevada and for whom
15 a principal purpose of its business is telecommunications.
16

17 9. MRS is properly referred to as both a “person” and a “caller” as those terms are used or
18 defined in 47 U.S.C. § 227.

19 **STATEMENT OF FACTS**

20 10. Plaintiff repeats, re-alleges, and incorporates by reference paragraphs 1 through 9
21 inclusive, above.
22

23 11. Beginning on or about Wednesday, July 16, 2014, Plaintiff began receiving robocalls
24 from MRS to his cell phone number. Plaintiff also received robocalls on or about July 23, 2014,
25 July 24, 2014, and August 8, 2014. (See Exhibit 1). A robocall is any call made using an automatic
26 telephone dialing system (*LCCA/er v. CashCalf*, 554 F. Supp.2d 1025 (N.D. Cal. 2008)). These calls
27 violate the Telephone Consumer Protection Act, 47 U.S.C. § 227. Robocalls are not permitted when
28

1 there is neither (1) an established business relationship (see § 227(a)(2) nor (2) prior express consent
2 (see § 227(b)(1)(A)).

3 12. MRS does not have an established business relationship with Plaintiff.

4 13. MRS did not have the prior express consent of the Plaintiff before making the calls to
5 Plaintiff.
6

7 14. It has been necessary for Plaintiff to obtain the services of an attorney to pursue this
8 claim, and Plaintiff is entitled to recover reasonable attorney's fees therefor.
9

10 **FIRST CLAIM FOR RELIEF**

11 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

12 15. Plaintiff repeats, re-alleges, and incorporates by reference paragraphs 1 through 14
13 inclusive, above.

14 16. Section 227(b)(3)(A) of the TCPA authorizes a private cause of action for a person or
15 entity to bring in an appropriate court of that state "an action based on a violation of this subsection or
16 the regulations prescribed under this subsection to enjoin such violation."
17

18 17. Section 227(b)(3)(B) of the Act authorizes a private cause of action for a person or entity
19 to bring in an appropriate court of that state "an action to recover for actual monetary loss from such a
20 violation, or to receive \$500 in damages for each such violation, whichever is greater."
21

22 18. Despite the fact that Plaintiff never consented to MRS making calls to his cellular
23 telephone, MRS repeatedly placed these non-emergency calls to Plaintiff's cellular telephone without
24 Plaintiff's consent.

25 19. The act also authorizes the Court, in its discretion, to award up to three (3) times the
26 actual damages sustained for violations when they are done "willfully and knowingly."
27
28

20. Here, upon information and belief, MRS repeatedly and regularly sent nonemergency, automated calls to the Plaintiff's cellular telephone after Plaintiff repeatedly contacted MRS in an effort to prevent further violations from occurring.

21. MRS did not have Plaintiff's express consent prior to contacting him on his cellular telephone using an automatic telephone dialing system or pre-recorded or artificial voice.

22. Plaintiff has been required to retain the services of an attorney to prosecute this action.

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief in Plaintiff's favor and that a judgment be entered against Defendant MRS for the following:

- (1) Actual damages;
- (2) Statutory damages up to \$1,500 per violation;
- (3) Reasonable attorney's fees and costs; and
- (4) Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff demands a trial by jury in this case.

RESPECTFULLY SUBMITTED,

DATED: October 21, 2014

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